



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 22 2016

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SOLID WASTE AND  
EMERGENCY RESPONSE

NOW THE  
OFFICE OF LAND AND  
EMERGENCY MANAGEMENT

Mr. Manuel Mata  
President  
AES Puerto Rico, LP  
P.O. Box 1890  
Guayama, Puerto Rico 00785

Dear Mr. Mata:

This letter provides written confirmation of the discussion between the U.S. Environmental Protection Agency (EPA) and AES Puerto Rico LP (AESPR) staff during our November 1, 2016 conference call regarding the Coal Combustion Residuals (CCR) rule. As you will recall, the EPA included AESPR on the draft open dump inventory (<https://www.epa.gov/coalash/compliance-data-and-information-websites-required-disposal-coal-combustion-residuals-ccr#inventory>) on August 26, 2016 because AESPR had not posted a publicly available CCR website containing its CCR fugitive dust control plan. We understand from your staff that AESPR does not consider itself to be subject to the CCR rule, but that as a precaution, the facility would be posting a publicly available CCR website and a CCR fugitive dust control plan.

As we explained during that call, posting the CCR website and CCR fugitive dust control plan were sufficient for the EPA to remove your facility from this first publication of the open dump inventory. However, as we made clear in our conversations, it is EPA's position that the pile of CCR located at your facility is a "CCR pile" under the CCR rule, and consequently is an existing landfill subject to all of the requirements applicable to CCR landfills under the CCR rule.<sup>1</sup>

The CCR regulation specifies that any non-containerized accumulation of solid, non-flowing CCR that is placed on the land is a CCR pile. This is the case whether the pile consists solely of CCR or of "AGREMAX";<sup>2</sup> as you know, the EPA does not consider the AGREMAX that is in a pile at the AES facility to be a product, but rather a solid waste. As the EPA explained in the CCR final rule, a pile of CCR that may someday be used beneficially (whether on-site or off-site) but is not yet beneficially used remains subject to the CCR rule.<sup>3</sup>

We understand that AESPR hopes eventually to "containerize" its on-site pile, but that currently the material continues to be placed directly on the land at the facility, without proper containment measures. Such "CCR piles" are expressly included in the definition of a CCR landfill and are regulated as such

<sup>1</sup> 40 C.F.R. 257.53. See also the preamble discussion at 80 Fed. Reg. at 21355-56.

<sup>2</sup> AGREMAX is a partially solidified mixture of coal combustion fly ash and bottom ash.

<sup>3</sup> 80 Fed. Reg. at 21356.

under the regulations at 40 C.F.R. 257.53. If at some point in the future AESPR wishes to containerize the pile, it would have to comply with the closure requirements applicable to CCR landfills, and in the interim, will need to comply with the requirements applicable to existing CCR landfills.

You may contact Mary Jackson at (703) 308-8453 if you have further questions. If AES's attorney wishes to discuss this matter, they should contact Laurel Celeste at (202) 564-1751.

Sincerely,



Barnes Johnson, Director  
Office of Resource Conservation and Recovery

cc: Mr. Samuel Boxerman

Partner, Sidley Austin LLP

John Filippelli

U.S. EPA Region 2